



House of Representatives

General Assembly

File No. 589

February Session, 2018

Substitute House Bill No. 5516

House of Representatives, April 19, 2018

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE RESPONSIBILITIES AND FUNDING OF THE COMMISSION ON HUMAN RIGHTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46a-55 of the general statutes is amended by
2 adding subsections (c) and (d) as follows (*Effective October 1, 2018*):

3 (NEW) (c) The executive director, through the supervising attorney,
4 may assign a commission legal counsel to represent the interests of the
5 state in any suit or other proceeding in which civil or human rights are
6 at issue. Commission legal counsel may intervene as a matter of right
7 in any such suit or proceeding without permission of the parties, the
8 presiding officer or the court.

9 (NEW) (d) The executive director, through the supervising attorney,
10 may, within available appropriations, assign a commission legal
11 counsel to bring a civil action, in accordance with this subsection, in
12 lieu of an administrative hearing pursuant to section 46a-84, as
13 amended by this act, when the executive director determines that a

14 civil action is in the public interest and if the parties to the
15 administrative hearing mutually agree, in writing, to the bringing of
16 such civil action by commission legal counsel. The commission legal
17 counsel shall bring such a civil action in the Superior Court not later
18 than ninety days following the date the commission legal counsel
19 notifies the parties of the executive director's determination. Such civil
20 action may be served by certified mail and shall not be subject to the
21 provisions of section 46a-100, 46a-101 or 46a-102. The jurisdiction of
22 the Superior Court in an action brought under this subsection shall be
23 limited to such claims, counterclaims, defenses or the like that could be
24 presented at an administrative hearing before the commission, had the
25 complaint remained with the commission for disposition. A
26 complainant may intervene as a matter of right without permission of
27 the court or the parties. The civil action shall be tried to the court
28 without a jury. If the commission legal counsel determines that the
29 interests of the state will not be adversely affected, the complainant or
30 attorney for the complainant shall present all or part of the case in
31 support of the complaint. The court may grant any relief available
32 under section 46a-104. Where the Superior Court finds that a
33 respondent has committed a discriminatory practice, the court shall
34 grant the commission its fees and costs and award the commission a
35 civil penalty, not exceeding ten thousand dollars, which shall be
36 payable to the commission and used by the commission to advance the
37 public interest in eliminating discrimination.

38 Sec. 2. Section 46a-84 of the general statutes is repealed and the
39 following is substituted in lieu thereof (*Effective October 1, 2018*):

40 (a) If the investigator fails to eliminate a discriminatory practice
41 complained of pursuant to subsection (a) or (b) of section 46a-82 within
42 fifty days of a finding of reasonable cause, the investigator shall,
43 within ten days, certify the complaint and the results of the
44 investigation to the executive director of the commission and to the
45 Attorney General. The investigator's conclusion that conciliation has
46 failed shall be conclusive on the issue.

47 (b) Upon (1) certification of a complaint filed pursuant to subsection
48 (a) or (b) of section 46a-82, (2) the filing of a complaint pursuant to
49 subsection (c) of said section, or (3) a decision to hear a complaint,
50 which is made pursuant to subsection (e) of section 46a-83, the Chief
51 Human Rights Referee shall appoint a human rights referee to act as a
52 presiding officer to hear the complaint. The chief referee shall also
53 appoint an individual authorized by subsection (e) of this section or a
54 referee, other than the referee appointed to hear the complaint, to
55 conduct settlement negotiations. The chief referee shall serve in the
56 name of the commission a copy of the complaint, as the same may
57 have been amended, requiring the respondent to answer the charges of
58 the complaint, together with a written notice requiring the respondent
59 to appear at a hearing or settlement conference at a date and time
60 specified in the notice. A hearing on a complaint filed pursuant to
61 subsection (a) or (b) of section 46a-82 shall be commenced by
62 convening a hearing conference not later than forty-five days after the
63 certification of the complaint. Such hearing shall be a de novo hearing
64 on the merits of the complaint and not an appeal of the commission's
65 processing of the complaint prior to its certification. A hearing on a
66 complaint filed pursuant to subsection (c) of section 46a-82 shall be
67 commenced by convening a hearing conference not later than twenty
68 days after the date of notice of such complaint. Hearings shall proceed
69 with reasonable dispatch and be concluded in accordance with the
70 provisions of section 4-180.

71 (c) The place of any hearing, hearing conference or settlement
72 conference shall be the commission's administrative office in Hartford,
73 unless all parties mutually agree to an alternate location.

74 (d) The case in support of the complaint shall be presented at the
75 hearing by the Attorney General, who shall be counsel for the
76 commission, or by a commission legal counsel as provided in section
77 46a-55, as amended by this act. If the Attorney General or the
78 commission legal counsel determines that a material mistake of law or
79 fact has been made in the finding of reasonable cause on a complaint
80 filed pursuant to subsection (a) or (b) of section 46a-82, or the

81 commission legal counsel determines that a complaint to be heard
82 pursuant to subsection (e) of section 46a-83, should be further
83 investigated, the Attorney General or the commission legal counsel
84 may withdraw the certification of the complaint or the decision to hear
85 the complaint and remand the file to the investigator for further action.
86 The investigator shall complete any required action not later than
87 ninety days after receipt of such file. The complainant may be
88 represented by an attorney of the complainant's own choice. If the
89 Attorney General or the commission legal counsel determines that the
90 interests of the state will not be adversely affected, the complainant or
91 the attorney for the complainant shall present all or part of the case in
92 support of the complaint. No commissioner may participate in the
93 deliberations of the presiding officer in the case.

94 (e) A human rights referee or attorney who volunteers service
95 pursuant to subdivision (18) of section 46a-54 may supervise
96 settlement endeavors. In employment discrimination cases only, the
97 complainant and respondent, with the permission of the chief referee,
98 may engage in alternate dispute resolution endeavors for not more
99 than three months. The cost of such alternate dispute resolution
100 endeavors shall be borne by the complainant or the respondent, or
101 both, and not by the commission. Any endeavors or negotiations for
102 conciliation, settlement or alternate dispute resolution shall not be
103 received in evidence.

104 (f) The respondent shall file a written answer to the complaint under
105 oath and appear at the hearing in person or otherwise, with or without
106 counsel, and submit testimony and be fully heard. If the respondent
107 fails to file a written answer not later than fifteen days after the date of
108 service of the complaint, or fails to appear at the hearing, hearing
109 conference or settlement conference after notice in accordance with
110 section 4-177, the presiding officer or a referee or an attorney who
111 volunteers services pursuant to subsection (e) of this section may enter
112 an order of default and order such relief as is necessary to eliminate
113 the discriminatory practice and make the complainant whole, except
114 that if the default was entered by an attorney who volunteers services

115 pursuant to subsection (e) of this section, the chief referee shall appoint
116 a referee to act as a presiding officer to award relief. The commission
117 or the complainant may petition the Superior Court for enforcement of
118 any such order for relief pursuant to section 46a-95.

119 (g) The presiding officer conducting any hearing shall permit
120 reasonable amendment to any complaint or answer and the testimony
121 taken at the hearing shall be under oath and be transcribed at the
122 request of any party.

123 (h) Each party shall be afforded the opportunity to inspect and copy
124 relevant and material records, papers and documents not in the
125 possession of such party, except as otherwise provided by applicable
126 state or federal law. The presiding officer may order a party to produce
127 such records, papers and documents, and if a party fails to comply
128 with such order within thirty days of the date of such order, the
129 presiding officer may issue a nonmonetary order that the presiding
130 officer deems just and appropriate, including, but not limited to, an
131 order (1) finding that the matters that are the subject of the order are
132 established in accordance with the claim of the party requesting such
133 order, (2) prohibiting the party who has failed to comply with such
134 order from introducing designated matters into evidence, (3) limiting
135 the participation of the noncomplying party with regard to issues or
136 facts relating to the order, and (4) drawing an adverse inference
137 against the noncomplying party.

138 Sec. 3. (NEW) (*Effective October 1, 2018*) (a) Notwithstanding any
139 provision of chapter 50 of the general statutes, the appropriations
140 recommended for the Commission on Human Rights and
141 Opportunities shall be the estimates of expenditure requirements
142 transmitted to the Secretary of the Office of Policy and Management by
143 the executive director of the commission and the recommended
144 adjustments and revisions of such estimates shall be the recommended
145 adjustments and revisions, if any, transmitted by said executive
146 director to the Office of Policy and Management.

147 (b) Notwithstanding the provisions of section 4-85 of the general

148 statutes, the Governor shall not reduce allotment requisitions or
149 allotments in force concerning the Commission on Human Rights and
150 Opportunities.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2018</i>	46a-55
Sec. 2	<i>October 1, 2018</i>	46a-84
Sec. 3	<i>October 1, 2018</i>	New section

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill makes several changes to the Commission on Human Rights and Opportunities (CHRO), including: 1) prohibiting the governor from reducing CHRO's budget allotments and requiring the Office of Policy and Management (OPM) to recommend CHRO's appropriations, 2) allowing CHRO's executive director to assign commission legal counsel to represent the state's interests in certain proceedings, and 3) permitting CHRO legal counsel to bring a civil action, instead of administrative hearing, within available appropriations. The provisions have no fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sHB 5516*****AN ACT CONCERNING THE RESPONSIBILITIES AND FUNDING OF THE COMMISSION ON HUMAN RIGHTS.*****SUMMARY**

This bill makes various changes affecting the Commission on Human Rights and Opportunities (CHRO). Specifically, it:

1. prohibits the governor from reducing CHRO's budget allotments and requires the Office of Policy and Management (OPM) to recommend appropriations for CHRO that reflect the agency's estimates of spending needs;
2. allows CHRO's executive director to assign commission legal counsel to represent the state's interests in any proceeding in which civil or human rights are at issue;
3. allows the executive director, within available appropriations, to assign CHRO legal counsel to bring a civil action, instead of an administrative hearing, when doing so would be in the public interest and the parties agree to the case proceeding to court; and
4. specifies that parties to CHRO administrative hearings generally must be allowed to inspect and copy relevant and material documents and allows the presiding officer to impose nonmonetary penalties on parties that do not comply with orders to produce such documents.

EFFECTIVE DATE: October 1, 2018

§ 3 — CHRO BUDGET

The bill requires the recommended CHRO budget that OPM submits to the legislature to be the estimates of expenditure

requirements, together with any recommended adjustments and revisions, that OPM receives from CHRO's executive director. It overrides existing law by prohibiting the governor from reducing an allotment of appropriated funds currently in force for, or requisitioned by, CHRO (see BACKGROUND).

§ 1 — CHRO LEGAL COUNSEL IN CIVIL LAWSUITS

Intervention in Certain Cases

The bill allows CHRO's executive director, through the supervising attorney, to assign CHRO legal counsel to represent the state's interests in any lawsuit or other proceeding in which civil or human rights are at issue. It allows CHRO legal counsel to intervene as a matter of right in any proceeding without permission from the parties, presiding officer, or court.

Civil Action in the Public Interest

Under existing law, certain cases within CHRO's jurisdiction proceed to an administrative hearing phase (e.g., if the investigator makes a finding that there is reasonable cause to believe that discrimination occurred and the parties cannot reach a settlement). The bill allows the CHRO executive director, through the supervising attorney and within available appropriations, to assign CHRO legal counsel to bring a civil action, instead of a case proceeding to an administrative hearing, if (1) she determines that this would be in the public interest and (2) the parties mutually agree, in writing, to the case proceeding in this way.

The legal counsel must bring the civil action within 90 days after notifying the parties of the executive director's determination. The action may be served by certified mail. The bill exempts such cases from certain conditions that apply to civil actions brought after CHRO has released a case from its jurisdiction (such as specific provisions on venue and the statute of limitations).

The bill limits the court's jurisdiction to the claims, counterclaims, defenses, or other matters that could be presented at a CHRO

administrative hearing, had the complaint remained with CHRO. The bill allows the complainant to intervene as a matter of right without permission from the court, CHRO, or the other party. The case must be tried without a jury.

Under the bill, the complainant or his or her attorney must present all or part of the case in support of the complaint if CHRO legal counsel determines that this will not adversely affect the state's interest.

The bill allows a court to grant the same relief that would be available in a civil action after a case was released from CHRO jurisdiction. If the court finds that a respondent committed a discriminatory practice, the bill requires the court to order the respondent to pay CHRO its fees and costs, in addition to a civil penalty of up to \$10,000. CHRO must use the funds from the penalty to advance the public interest in eliminating discrimination.

§ 2 — CHRO ADMINISTRATIVE HEARINGS

Document Inspection and Consequences of Noncompliance

Under the bill, each party to a CHRO hearing must have the opportunity to inspect and copy relevant and material records, papers, and other documents not in the party's possession, unless another state or federal law would prohibit this. The bill allows the presiding officer to (1) order a party to produce these documents and (2) issue a nonmonetary order against a party who fails to comply within 30 days.

The nonmonetary order must be deemed just and appropriate by the officer and may do the following:

1. find that the matters that are the subject of the order are established as set forth in the other party's claim,
2. prohibit the noncomplying party from introducing designated matters into evidence,
3. limit that party's participation as to issues or facts relating to the

order, and

4. draw an adverse inference against that party.

BACKGROUND

Governor's Authority to Reduce Allotment Requisitions or Allotments in Force

By law, subject to certain limits and restrictions, the governor can reduce an allotment requisition or allotment in force if he (1) determines circumstances have changed after the budget's adoption or (2) estimates that budgeted resources will be insufficient to fully fund all appropriations. He may also do so if the comptroller's cumulative monthly financial statement shows a General Fund deficit of more than 1% of total General Fund appropriations. These reductions are called rescissions (CGS § 4-85).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 24 Nay 17 (04/04/2018)